



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 30, 1998

Mr. Stephen A. Smith
Assistant County Attorney
County of Harris
1019 Congress, 15th Floor
Houston, Texas 77002-1700

OR98-2882

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120031.

The Harris County Fire Marshall's Office received a request for "all public information provided to Harris County Fire Marshall's Office by Doug Holmes and any representative of State Farm Lloyds regarding" a certain residential fire. You seek to withhold the requested information under sections 552.101, 552.103, 552.107, and 552.108 of the Government Code.

Section 552.101 requires withholding information made confidential by statute. Article 5.46 of the Insurance Code provides for release of information by an insurance company investigating a fire loss to a local fire marshal on request. Subpart (D) of the article provides that those receiving such information "shall hold the information in confidence until such time as its release is required pursuant to a civil or criminal proceeding." To the extent that the information responsive to the request was provided to the Fire Marshall's office under article 5.46, it must be withheld from the requestor.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure

(a) Information held by a law enforcement agency or prosecutor
that deals with the detection, investigation, or prosecution of crime . . .
if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

You advise that the requested information relates to an ongoing criminal investigation. Based on your representations, we conclude that you may generally withhold the remaining portions of the requested records, *i.e.* those not protected by article 5.46(D) of the Insurance Code, as discussed above, under section 552.108(a)(1). *See, e.g.*, Open Records Decision No. 127 (1976) (arson investigation division of fire department is "law enforcement agency" under predecessor to current section 552.108).

Section 552.108 does not, however, except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). You must release these types of information in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Except for such basic information, which must be released, you may withhold the remaining requested information under section 552.108(a)(1).

We note that you say that prior to making this request, the requestor sought to subpoena certain information relating to the residential fire to which the requested information here relates. The proceeding in question is a civil proceeding to which the fire marshal's office is not a party. The court granted the motion to quash the subpoena, and ordered that "no discovery of the records of the Harris County Fire Marshall's Office shall occur without the express written permission of this court." You contend that this order precludes the requestor's gaining access to the information sought here under chapter 552 of the Government Code.

We understand the court order to prevent only "discovery" of information from the Fire Marshall's office. We do not construe the order as limiting the requestor's access to information under chapter 552. Should you be concerned that release of the "basic information" here would violate or circumvent, the court order, we advise you to address your concerns to the court. A court order regarding a requestor's access to the information under chapter 552 would of course prevail over this decision.

Since we have disposed of this request under section 552.101 in conjunction with article 5.46 of the Insurance Code and section 552.108(a)(1), we need not address your other claims for withholding except to note that the "basic information" we have ordered released here would not be protected under the other exceptions you cited.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue

under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 120031

Enclosures: Submitted documents

cc: Mr. Donald G. Wilhelm
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(w/o enclosures)